

|                          |   |                              |
|--------------------------|---|------------------------------|
| Eliseo Solis, Jr.,       | ) | No. CV 11-1202-PHX-GMS (ECV) |
|                          | ) |                              |
| Petitioner,              | ) | <b>ORDER</b>                 |
|                          | ) |                              |
| vs.                      | ) |                              |
|                          | ) |                              |
| Charles L. Ryan, et al., | ) |                              |
|                          | ) |                              |
| Respondents.             | ) |                              |

## I. Petition

Petitioner raises six grounds for relief. In Ground One, Petitioner alleges that his Fourteenth Amendment right to due process was violated where his sentence was aggravated by a factor that was an essential element of the offense. In Ground Two, Petitioner alleges that he received the ineffective assistance of appellate counsel based on counsel's failure to raise the issue in Count One on appeal. In Ground Three, he alleges that his sentence was

1 unlawfully aggravated based on the presence of an accomplice when insufficient evidence  
2 supported that factor. In Ground Four, he alleges that the trial court failed to consider all of  
3 the mitigating factors in violation of his Fourteenth Amendment due process rights. In  
4 Ground Five and Six, Petitioner alleges that he received the ineffective assistance of trial  
5 counsel in violation of his Sixth Amendment rights based on failures to object to false  
6 testimony or to present a witness who could have testified that Petitioner acted in self-  
7 defense. The Court will require Respondents to answer the Petition. 28 U.S.C. § 2254(a).

## 8 **II. Warnings**

### 9 **A. Address Changes**

10 Petitioner must file and serve a notice of a change of address in accordance with Rule  
11 83.3(d) of the Local Rules of Civil Procedure. Petitioner must not include a motion for other  
12 relief with a notice of change of address. Failure to comply may result in dismissal of this  
13 action.

### 14 **B. Copies**

15 Petitioner must serve Respondents, or counsel if an appearance has been entered, a  
16 copy of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a  
17 certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Petitioner  
18 must submit an additional copy of every filing for use by the Court. LRCiv 5.4. Failure to  
19 comply may result in the filing being stricken without further notice to Petitioner.

### 20 **C. Possible Dismissal**

21 If Petitioner fails to timely comply with every provision of this Order, including these  
22 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,  
23 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to  
24 comply with any order of the Court).

## 25 **IT IS ORDERED:**

26 (1) The Clerk of Court must serve a copy of the Petition (Doc. 1) and this Order  
27 on the Respondent and the Attorney General of the State of Arizona by certified mail  
28 pursuant to Rule 4, Rules Governing Section 2254 Cases.

(2) Respondents must answer the Petition within 40 days of the date of service. Respondents must not file a dispositive motion in place of an answer but may file an answer limited to relevant affirmative defenses, including but not limited to, statute of limitations, procedural bar, or non-retroactivity. If the answer is limited to affirmative defenses, only those portions of the record relevant to those defenses need be attached to the answer. Failure to set forth an affirmative defense in an answer may be treated as a waiver of the defense. Day v. McDonough, 547 U.S. 198, 209-11 (2006). If not limited to affirmative defenses, the answer must fully comply with all of the requirements of Rule 5 of the Rules Governing Section 2254 Cases.

(3) Petitioner may file a reply within 30 days from the date of service of the answer.

(4) This matter is referred to Magistrate Judge Edward C. Voss pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a report and recommendation.

DATED this 6th day of July, 2011.

*G. Murray Snow*  
G. Murray Snow  
United States District Judge